

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 02-15585
Chapter 13

AARON ANDERSON McHONE
VIRGINIA ELLEN McHONE

Debtors

MEMORANDUM

Appearances: Richard L. Banks, Richard Banks & Associates, P.C., Cleveland,
Tennessee, Attorney for Debtors

Richard K. Smith and Kathleen W. Smith, Parker, Lawrence, Cantrell &
Dean, Nashville, Tennessee, Attorneys for Regions Bank

HONORABLE R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

This chapter 13 case is before the court on the debtors' motion to strike an objection to confirmation filed on behalf of Regions Bank. The objection to confirmation of the plan was filed by Regions Bank on December 26, 2002. The plan was confirmed by order entered October 11, 2002. The parties have treated the late filed objection of Regions Bank as a motion to reconsider the order of confirmation. The court will do likewise.

The court will take judicial notice of documents filed in the bankruptcy case. Fed. R. Bankr. P. 9017; Fed. R. Evid. 201; see, e.g., *Rickel & Assoc., Inc. v. Smith (In re Rickel & Assoc., Inc.)*, 272 B.R. 74 (Bankr. S. D. N. Y. 2002); *Northwestern Institute of Psychiatry, Inc. v.*

Travelers Indemn. Co. (In re Northwestern Institute of Psychiatry, Inc.), 268 B.R. 79 (Bankr. E. D. Pa. 2001); *In re Blum*, 255 B.R. 9 (Bankr. S. D. Ohio 2000); *Smith v. Weissfisch (In re Muzquiz)*, 122 B.R. 56 (Bankr. S. D. Tex. 1990).

This case was filed August 30, 2002. The debtors' proposed plan was filed with the case. The proposed plan provided that Regions Bank would be allowed to retain its lien on two mobile homes and land and be paid \$10,000.00 for the scheduled value of the mobile homes and land at a monthly payment of \$203.00 which included 8% interest. The proposed plan also provided that Regions Bank would receive an allowed secured claim of \$500.00 on a 1986 Ford Ranger. Unsecured claims, or any undersecured balance, would be paid approximately 10% of the claim.

Consistent with the chapter 13 plan, a wage order was immediately issued to Mrs. McHone's employer, Shaw Industries, requiring \$127.00 weekly be deducted from her wages. A meeting of creditors was scheduled for October 9, 2002.

Notice of the commencement of the case and a copy of the proposed plan was sent to Regions Bank and other scheduled creditors on September 19, 2002. This notice contains two conspicuous provisions that bear on this case. One is that "the creditors must file any objection to confirmation in writing at or before the meeting of creditors held pursuant to § 341 of the Bankruptcy Code." The other is that "the value of the collateral proposed by the debtors' plan will become the value of the secured portion of the claim upon confirmation unless a timely objection to confirmation is filed." Both of these provisions are in bold type.

Regions Bank filed a timely claim on September 12, 2002. Regions Bank did not appear at the meeting of creditors on October 9, 2002, nor did it timely file an objection to

confirmation. In fact, no objections to confirmation were filed, and the plan was confirmed by order entered October 11, 2002. The late filed objection of Regions Bank seeks to contest the value of the mobile homes and land.

It is firmly established in this district that this court has the authority to set a deadline by which objections to confirmation of a chapter 13 plan must be filed. *In re Nimmons*, 1:00- CV- 130 E.D. Tenn. October 11, 2000; *In re Duncan*, 245 B.R. 538 (Bankr. E.D. Tenn. 2000). The narrow issue before the court is whether the debtors' motion to strike the late filed objection to confirmation should be sustained.

As previously noted, however, the parties' have addressed a broader issue of whether the late filed objection is to be treated as a motion for relief from a final judgment pursuant to Rule 60 of the *Fed. R. Civ. P.*, made applicable to this case by Bankruptcy Rule 9024. The parties seem to agree that the factors set forth in *Pioneer Investment Services Co. v. Brunswick Assoc., Ltd. Partnership*, 507 U.S. 380, 113 S.Ct. 1489 (1993) should apply in this case. Those factors would include the danger of prejudice to the debtor; the length of delay and its potential impact on judicial proceedings; the reason for the delay, including whether it was within the reasonable control of the movant; and whether the movant acted in good faith. *Pioneer Investment*, 507 U.S. 380, 394, 113 S.Ct. 1489, 1498. Regions Bank also relies heavily on *In re Kelly*, 281 B.R. 62 (S.D. Ala. 2001).

It should be noted that both *Pioneer Investment Services Co.* and *In re Kelly*, involved notices that were not clear and unambiguous. That argument has not been made in this case, nor could it be. Whether Regions Bank acted in good faith is also not at issue.

According to an affidavit signed by Marsha Ware, who is an officer in the

Bankruptcy Department of Regions Bank, the matter was initially referred to an attorney in Fayetteville, Tennessee, on or about September 10, 2002. She stated that she asked the attorney to object to the plan. Not until December 4, almost three months later, did she contact the attorney again about the status of the matter. The attorney indicated he had never received the file and that no objection had been lodged with the court. The proof of claim was signed by Maria Grier and not Marsha Ware. It is obvious that at least two people at Regions Bank knew the deadlines that had been imposed by the court for filing claims and objecting to the proposed plan. It would have been reasonable for Regions Bank to have expected some acknowledgment from the attorney to which the file was referred either before or shortly after the scheduled meeting of creditors. Almost sixty days elapsed before any follow up was made. During this time the debtors would have paid more than \$1,000.00 on their confirmed plan.

On a monthly basis, the debtors pay approximately \$546.00 to the chapter 13 trustee through a wage order. Pursuant to the confirmed plan, there are monthly payments on allowed secured claims in the total amount of \$463.00. After the trustee's commission, there is less than \$80.00 each month to be paid on the claims of unsecured and undersecured creditors. Any substantial increase in the value of the allowed secured claim of Regions Bank may have resulted in a plan that would not have been confirmable.

If the order of confirmation were to be set aside, other creditors would stop receiving monies currently due them under the confirmed plan. Thus, it is not just a prejudice to the debtors to revoke the order of confirmation, but to other creditors as well. If a hearing were to be held on the late filed objection by Regions and if the value of its collateral were determined to be significantly greater than that set by the plan, a modification of the plan would no doubt be necessitated. This would cause additional burden and expense on the debtors, and require them

to attend another meeting of creditors. The deadline for objecting to confirmation is not set arbitrarily to deprive creditors of their rights; it is set to require timely objections so that confirmation can be granted or denied promptly for the benefit of both debtors and creditors.

In this case, Regions Bank has established no equitable basis for relief from the deadlines established by the court. This is not a case where the deadlines as set forth are unusual or inconspicuous, *Pioneer Investment Services Co. v. Brunswick Assoc., Ltd. Partnership*, 507 U.S. 380, 113 S.Ct. 1489 (1993), or where the deadlines may be confusing. *In re Kelly*, 281 B.R. 62 (S.D. Ala. 2001). Regions Bank knew the deadlines that had been imposed by the court and simply failed to make adequate arrangements to meet those deadlines.

The court will enter an order granting the motion of the debtors to strike the late filed objection by Regions Bank.

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

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No. 02-15585
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ORDER

In accordance with the court's Memorandum entered this date,

It is ORDERED that the motion to strike late filed objection to confirmation of
Regions Bank is GRANTED and the case shall continue under the previously confirmed plan.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

(Entered 10/14/03)